

HOUSE BILL 1650

By Brooks H

AN ACT to amend Tennessee Code Annotated, Title 67,
Chapter 6, relative to taxation of food and food
ingredients for human consumption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by
adding the following language as a new section:

§ 67-6-396.

(a) The exemption provided by this section shall be known as a "food sales tax holiday weekend." There is exempt from the tax imposed by this chapter food and food ingredients for human consumption as defined in § 67-6-228, if sold between 12:01 a.m. on the first Friday of any month and 11:59 p.m. the following Sunday.

(b) Each retailer making exempt sales under this section shall report the amount of such sales to the commissioner on the retailer's sales and use tax returns.

(c) The exemption provided in this section shall be subject to the following provisions:

(1) Rain Checks. A rain check allows a customer to purchase an item at a certain price at a later time, because the particular item was out of stock. Eligible food or food ingredients for human consumption that customers purchase during an exemption period with use of a rain check shall qualify for the exemption, regardless of when the rain check was issued. Issuance of a rain check during an exemption period shall not qualify food or food ingredients for human consumption for the exemption, unless such food or food ingredient to which the rain check applies is actually purchased during an exemption period;

(2) Delivery Charges. Delivery charges, including shipping, handling and service charges, are not part of food and food ingredients for human

consumption as defined in § 67-6-228 for the purposes of applying the exemption provided by this section;

(3) Order Date and Back Orders. For the purpose of the monthly sales tax holiday, food and food ingredients for human consumption qualifies for exemption, if:

(A) The food or food ingredients for human consumption is both delivered to and paid for by the customer during the exemption period; or

(B) The customer orders and pays for food or food ingredients for human consumption and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order or assignment of an "order number" to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment, notwithstanding that the shipment may be delayed because of a backlog of orders, or because stock is currently unavailable to, or on back order by, the seller;

(4) Returns. For a seven-day period immediately after the applicable sales tax holiday exemption period, when a customer returns food or food ingredients for human consumption that would qualify for the exemption, no credit for or refund of sales tax shall be given, unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This seven-day period is set solely for the purpose of designating a time period during which the

customer must provide documentation that shows that sales tax was paid on returned merchandise. The seven-day period is not intended to change a seller's policy on the time period during which the seller will accept returns; and

(5) Different Time Zones. The time zone of the seller's location determines the authorized time period for a sales tax holiday, when the purchaser is located in one time zone and a seller is located in another.

SECTION 2. Tennessee Code Annotated, Section 67-6-710, is amended by adding the following language as a new subsection:

(1) Notwithstanding any provision of law to the contrary, the commissioner, based upon reporting of exempt sales under § 67-6-396 and any other data or information the commissioner deems relevant, shall substantially reimburse counties and municipalities for the loss of local tax under this part resulting from the exemption provided by § 67-6-396. The amount of the reimbursement shall be approximately equal to the aggregate amount of local tax that would have been collected under this part on the sale or use of goods otherwise taxable but for the provisions of § 67-6-396.

(2) If the loss of local tax subject to reimbursement under this subsection cannot be identified to a particular situs, the amount of the reimbursement shall be distributed to the counties based on the ratio of total local tax collections in the county under this part over the total local tax collections in all counties under this part. The amount received by the county under this subdivision (2) shall be distributed first as provided for in § 67-6-712(a)(1). The remainder shall be distributed to each municipality in the county based on the ratio of total collections in that municipality over the total collections in the county and shall be distributed to the county based on the ratio of total collections in the unincorporated portions of the county over the total collections in the county.

(3) Notwithstanding any provision of § 67-6-103 to the contrary, the distribution required by this subsection shall be made from state sales tax collections prior to distribution under § 67-6-103.

SECTION 3. This act shall take effect January 1, 2008, the public welfare requiring it.